

1 BRIAN M. KRAMER (CA SBN 212107)
BMKramer@mofo.com
2 JOHN R. LANHAM (CA SBN 289382)
JLanham@mofo.com
3 DEAN S. ATYIA (CA SBN 298615)
DAtyia@mofo.com
4 MORRISON & FOERSTER LLP
12531 High Bluff Drive
5 San Diego, California 92130-2040
Telephone: 858.720.5100
6 Facsimile: 858.720.5125

7 Attorneys for Plaintiff
DNA GENOTEK INC.
8

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
11

12 DNA GENOTEK INC., a Delaware
13 Corporation,

14 Plaintiff,

15 v.

16 SPECTRUM SOLUTIONS L.L.C., a Utah
Limited Liability Company, and
17 SPECTRUM DNA, a Utah Limited
Liability Company,

18 Defendants.
19

Case No. '16CV1544 MMANLS

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

20 Plaintiff DNA Genotek Inc. ("DNA Genotek"), by its attorneys, for its
21 Complaint, alleges as follows:

22 1. This is an action for patent infringement arising under the patent laws
23 of the United States, Title 35, United States Code, involving United States Patent
24 No. 9,207,164 B2 ("the '164 patent") (attached as Exhibit A hereto).
25

PARTIES

26 2. Plaintiff DNA Genotek is a Canadian corporation with its principal
27 place of business in Kanata, Ontario. DNA Genotek is a wholly-owned subsidiary
28

1 of OraSure Technologies, Inc., a Delaware corporation with its principal place of
2 business in Bethlehem, Pennsylvania.

3 3. Upon information and belief, Spectrum Solutions L.L.C. is a Utah
4 limited liability companies with its principal place of business in Draper, Utah.
5 Upon information and belief, Spectrum DNA is a division of Spectrum Solutions
6 L.L.C. (collectively “Spectrum”). Spectrum Solutions L.L.C. was formerly known
7 as Spectrum Packaging, L.L.C.

8 **JURISDICTION AND VENUE**

9 4. This is an action for patent infringement arising under the patent laws
10 of the United States, Title 35, Section 1, et seq. of the United States Code. This
11 Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

12 5. This Court has personal jurisdiction over Spectrum because it has
13 purposefully availed itself of the privileges and benefits of the laws of the State of
14 California. Upon information and belief, Spectrum, its agents, subsidiaries,
15 employees, market products in California and ship products to California that
16 infringe the ’164 patent. Spectrum maintains at least two websites. It registered the
17 domain name, www.spectrum-dna.com, on July 28, 2015. Spectrum also hired a
18 marketing company that launched an additional website, through which Spectrum
19 markets its DNA collection devices throughout the United States, including
20 California. On information and belief, before July 28, 2015, Spectrum concealed
21 its making, using, selling, offering for sale, or importing the Spectrum product from
22 DNA Genotek and much of the public. Spectrum, its agents, subsidiaries,
23 employees, and/or affiliates target customers with ties to California through at least
24 one of their websites, which describes Spectrum as a company responding to a need
25 “in the DNA space calling for an innovative saliva DNA collection device” and
26 offering “an innovative device that is user friendly and produces excellent clinical
27 results.”
28

6. Upon information and belief, Spectrum manufactures at least two DNA saliva collection devices that infringe the '164 patent. Infringing products include Spectrum Model No. SS-SAL-1 and ACOMD-0100. Upon information and belief, Defendant Spectrum DNA makes, sells, offers for sale, and imports DNA saliva collection devices that infringe the '164 patent (the "Spectrum Product"). Upon information and belief, Spectrum assembles and sells DNA saliva collection devices that are shipped in interstate commerce, including to California, and that infringe the '164 patent.

7. Venue is proper in this District under 28 U.S.C. §§ 1391(b), (c), and 1400(b).

FACTUAL BACKGROUND

8. DNA Genotek is a leading provider of products for biological sample collection, including oral fluid sample collection and stabilization solutions for molecular applications. DNA Genotek has revolutionized the nucleic acid (DNA and RNA) collection market with products that provide substantial advantages over traditional methods of biological sample collection. DNA Genotek's products incorporate proprietary technology that is protected by a robust patent estate.

9. DNA Genotek developed and patented its proprietary saliva DNA collection kits (“DNA Genotek Saliva Collection Products”). DNA Genotek sells the DNA Genotek Saliva Collection Products to customers and distributors worldwide, including in this district.

10. DNA Genotek is the owner by assignment of all right, title, and interest in and to the '164 patent, which duly and legally issued to DNA Genotek, as assignee of Rod Muir, Derek Kirkland, Ian Curry, Roy Sunstrum, Paul Lem, and H. Chaim Birnboim, on December 8, 2015.

11. Spectrum registered the website www.spectrum-dna.com on July 28, 2015. On or about July 29, 2015, Spectrum's website became publicly accessible.

1 On July 30, 2015, DNA Genotek filed suit against Spectrum in the District of
2 Delaware, alleging the Spectrum infringes United States Patent No. 8,221,381 B2
3 (the '381 patent), entitled "Container System for Releasably Storing a Substance."
4 The '381 patent and the '164 patent are part of the same patent family.

5 12. Spectrum has been and is now infringing one or more claims of the
6 '164 patent.

7 13. Spectrum infringes the '164 patent, either literally or under the
8 doctrine of equivalents, by making, using, offering for sale, selling and/or
9 importing the Spectrum Product.

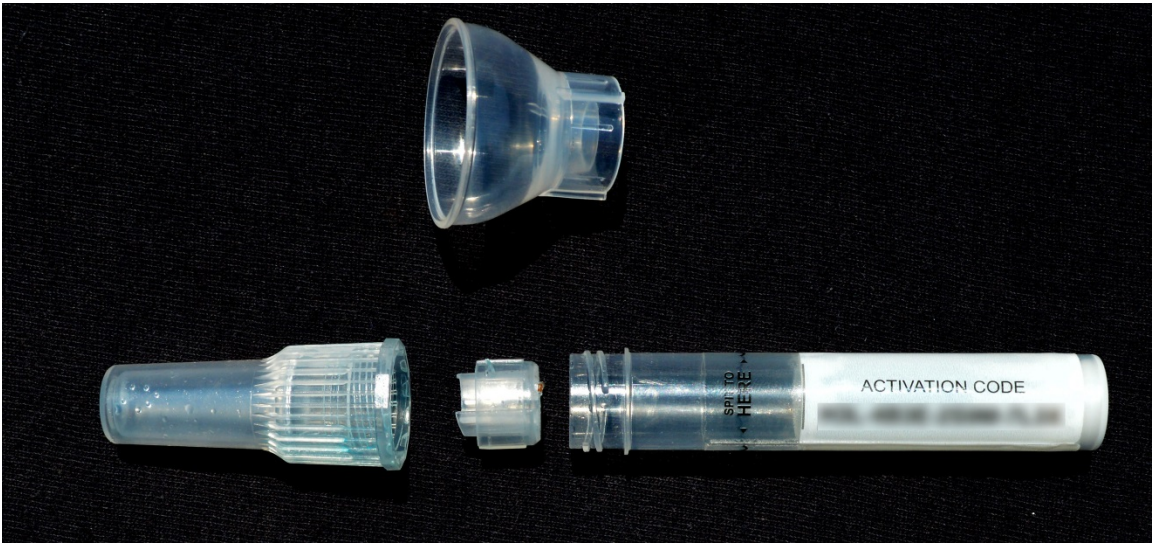
10 14. On information and belief, Spectrum has been aware of the '164 patent
11 at least as of December 2015. Spectrum has been aware of the patent application
12 leading to the '164 patent at least as early as July 2015.

13 15. Spectrum was aware of the '164 patent when engaging in these
14 knowing and purposeful activities and was aware that the making, using, selling, or
15 offering for sale of the Spectrum Product or services incorporating the Spectrum
16 Product constituted an act of infringement of the '164 patent.

17 16. On its website, Spectrum claims to have "[c]omplete fulfillment
18 capabilities," including direct shipping to customers. Examples of products shipped
19 to the Southern District of California described on Spectrum's website include this
20 device:

21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



1 17. Upon information and belief, apart from its sale of the Spectrum
2 Product to individuals throughout the country, including California, Spectrum has
3 shipped and offered for sale the Spectrum Product to persons and/or entities who
4 maintain business operations and headquarters in the Southern District of
5 California.

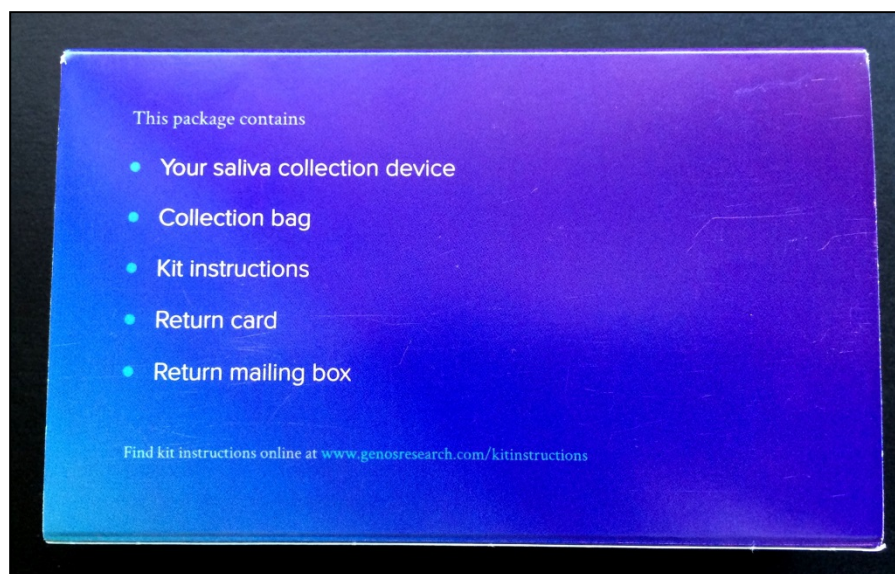
6 18. Spectrum's website also includes a depiction of an alternatively-
7 labeled Spectrum Product that Spectrum offers for sale in California. This is the
8 picture from the website:



18
19 [http://www.spectrum-dna.com/wp-content/uploads/2015/06/spectrumdna-kit-101-](http://www.spectrum-dna.com/wp-content/uploads/2015/06/spectrumdna-kit-101-e1442898548499.jpg)
20 [e1442898548499.jpg](http://www.spectrum-dna.com/wp-content/uploads/2015/06/spectrumdna-kit-101-e1442898548499.jpg).

21 19. The following pictures depict an alternatively-labeled Spectrum
22 Product that Spectrum manufactured. Spectrum sold the below depicted product to
23 a customer in California. Spectrum shipped the product to a customer in California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



1
2 **COUNT I – INFRINGEMENT OF THE '164 PATENT**

3 20. DNA Genotek restates and incorporates by reference paragraphs 1-19,
4 as if fully set forth herein.

5 21. Spectrum has been and is now infringing one or more claims of the
6 '164 patent, either literally or by the doctrine of equivalents.

7 22. Spectrum's infringing activities include making, using, offering for
8 sale, selling, and/or importing into the United States products that infringe one or
9 more claims of the '164 patent.

10 23. Spectrum's infringing activities violate 35 U.S.C. § 271.

11 24. As a result of Spectrum's infringement of the '164 patent, DNA
12 Genotek has been and will be damaged, and DNA Genotek is entitled to be
13 compensated for such damages pursuant to 35 U.S.C. § 284 in an amount to be
14 determined at trial, but in no event less than a reasonable royalty.

15 25. Upon information and belief, Spectrum's infringement of the '164
16 patent will continue unless enjoined by this Court. As a result of Spectrum's
17 infringement, DNA Genotek has suffered and will continue to suffer irreparable
18 harm for which there is no adequate remedy at law. Accordingly, DNA Genotek is
19 entitled to injunctive relief against such infringement.

20 26. As a result of Spectrum's infringement, DNA Genotek has suffered
21 and will continue to suffer significant damages.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, DNA Genotek respectfully requests the following relief:

24 (a) Entry of judgment that Spectrum has infringed the '164 patent;

25 (b) Preliminary and permanent injunctive relief enjoining Spectrum, its
26 officers, agents, servants, employees, attorneys, and all other persons in active
27 concert or participation with them, from directly or indirectly infringing the '164
28 patent;

1 (c) An award of damages adequate to compensate DNA Genotek for
2 Spectrum's infringement of the '164 patent;

3 (d) A declaration that this case is exceptional under 35 U.S.C. § 285,
4 and/or other applicable authority;

5 (e) An award of DNA Genotek's costs and attorneys' fees incurred in
6 connection with this action, under 35 U.S.C. § 285, and other applicable authority;

7 (f) An award of pre-judgment interest; and

8 (g) Such other and further relief as this Court deems just and proper.

9 **DEMAND FOR JURY TRIAL**

10 DNA Genotek hereby demands trial by jury on all issues so triable.

11
12 Dated: June 20, 2016

BRIAN M. KRAMER
JOHN R. LANHAM
DEAN S. ATYIA
MORRISON & FOERSTER LLP

13
14
15
16 By: /s/ Brian M. Kramer

17 Brian M. Kramer

18 Attorney for Plaintiff
19 DNA GENOTEK INC.
20
21
22
23
24
25
26
27
28